

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL ACTION NO.
)	3:07cr258-MHT
CHRISTOPHER SMITH)	(WO)

ORDER

This cause is before the court on defendant Christopher Smith's motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for May 12, 2008, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(8)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(8)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Smith in a speedy trial. Smith represents that he has applied for pre-trial diversion. Because the government has not yet finished considering Smith's application, the current trial date,

May 12, 2008, does not provide adequate time for him to prepare for trial if the government ultimately denies his request. In addition, the government does not oppose a continuance.

Accordingly, it is ORDERED as follows:

(1) Defendant Christopher Smith's motion for continuance (doc. no. 13) is granted.

(2) The jury selection and trial, now set for May 12, 2008, are reset for October 14, 2008, at 10:00 a.m., at the G.W. Andrews Federal Building and United States Courthouse, 701 Avenue A, Opelika, Alabama.

DONE, this the 9th day of April, 2008.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE